

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DAVID ROBINSON,	:	
<i>Plaintiff,</i>	:	
	:	
v.	:	CIVIL ACTION NO. 19-CV-953
	:	
JESSIE KIRSCH, <i>et al.</i> ,	:	
<i>Defendants.</i>	:	

ORDER

AND NOW, this 15th day of January, 2020, upon consideration of Plaintiff David Robinson's Motion to Proceed *In Forma Pauperis* (ECF No. 9), Prisoner Trust Fund Account Statement (ECF No. 10), and *pro se* Amended Complaint (ECF No. 8), it is **ORDERED** that:

1. The Court's June 24, 2019 Order (ECF No. 6) dismissing this case for failure to prosecute is **VACATED**.
2. The Clerk of Court shall **REOPEN** this case.
3. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
4. David Robinson, #2018-5813, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Warden of Berks County Jail or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Robinson's inmate account; or (b) the average monthly balance in Robinson's inmate account for the six-month period immediately preceding the filing of this case. The Warden or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket

number for this case. In each succeeding month when the amount in Robinson's inmate trust fund account exceeds \$10.00, the Warden or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Robinson's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

5. The Clerk of Court is directed to **SEND** a copy of this Order to the Warden of Berks County Jail.

6. The Amended Complaint is **DEEMED** filed.

7. For the reasons stated in the Court's Memorandum, the following claims are **DISMISSED WITHOUT PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii):

- a. Robinson's claims against the Defendants in their official capacities;
- b. Robinson's claims against Defendant Mitzi Montz in her individual capacity; and
- c. Robinson's claims against Nurse Anthony in his individual capacity.

8. Robinson is given thirty (30) days to file a second amended complaint in the event he can allege additional facts to cure the defect in his dismissed claims. Any second amended complaint shall identify all defendants in the caption of the second amended complaint in addition to identifying them in the body of the amended complaint, shall state the basis for Robinson's claims against each defendant, and shall bear the title "Second Amended Complaint" and the case number 19-953. **If Robinson files a second amended complaint, his second amended complaint must be a complete document that includes all of the bases for Robinson's claims,**

including claims that the Court has not yet dismissed if he seeks to proceed on those claims. Claims that are not included in the second amended complaint will not be considered part of this case. When drafting his second amended complaint, Robinson should be mindful of the Court's reasons for dismissing his claims as explained in the Court's Memorandum. Upon the filing of a second amended complaint, the Clerk shall not make service until so **ORDERED** by the Court.

9. If Robinson does not file a second amended complaint the Court will direct service of his Amended Complaint on Defendants Jessie Kirsch and Nurse Leona only so that Robinson can proceed on his deliberate indifference claims against them as described in the Court's Memorandum. Robinson may also notify the Court that he seeks to proceed on these claims rather than file a second amended complaint. If he files such a notice, Robinson is reminded to include the case number for this case, 19-953.

10. The time to serve process under Federal Rule of Civil Procedure 4(m) is **EXTENDED** to the date 90 days after the Court issues summonses in this case, if summonses are issued.

BY THE COURT:

/s/ Gerald J. Pappert
GERALD J. PAPPERT, J.